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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/564,109

08/21/2006

Pascal Fourcade

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FINA TECHNOLOGY INC  
PO BOX 674412  
HOUSTON, TX 77267-4412

EXAMINER

LENIHAN, JEFFREY S

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

11/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/564,109	<b>Applicant(s)</b> FOURCADE, PASCAL	
	<b>Examiner</b> Jeffrey Lenihan	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8-15, 17-21 and 23-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-15, 17-21 and 23-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action is responsive to the amendment filed on 10/28/2009.
2. The objections and rejections not addressed below are deemed withdrawn.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

### ***Continued Examination Under 37 CFR 1.114***

4. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/28/2009 has been entered.

5. Claim 8 is objected to because of the following informalities: The claim states that either the metallocene-catalyzed ethylene polymer (mPE), the styrene-butadiene (SB) block copolymer, or combinations thereof are present in a claimed amount. The word "either" should be deleted, as more than two options are recited. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The independent claim has been amended to recite a composition wherein one of the mPE, the SB block copolymer, or combinations thereof are present in an amount of at least 50% by weight. The original disclosure states that the film may comprise at least 50% of the mPE (Page 3, lines 26-28) and the SB block copolymer (Page 3, lines 21-24). Neither the specification nor the original claims provides support for the limitation "combinations thereof," which reads on compositions wherein the sum of the amounts of mPE and SB block copolymer is at least 50% but neither individual component is present in that amount-e.g., a composition comprising 20% mPE and 30% SB block copolymer.

***Claim Rejections - 35 USC § 103***

8. Claims 8-15, 17-21 and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nabeta et al, US4302554 (of record), in view of Marechal, EP1312624 (of record).

9. The rejection stands as per the reasons outlined in the previous Office Action, incorporated herein by reference. Regarding the amendment to claim 8, the examiner

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notes that the limitation that at least one of the recited group is present in an amount of at least 50% by weight is addressed in paragraph 9 of the Office Action mailed on 2/17/2009, incorporated herein by reference (claim 8).

10. Claims 8-11, 13, 14, 17, 18, and 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkie et al, US6022612 (of record), in view of the K RESIN ® DK11 product data sheet, published by Chevron Phillips Chemical Company in January 2001 (of record).

11. The rejection stands as per the reasons outlined in the previous Office Action, incorporated herein by reference. Regarding the amendment to claim 8, the examiner notes that the limitation that at least one of the recited group is present in an amount of at least 50% by weight is addressed in paragraph 15 of the Office Action mailed on 2/17/2009, incorporated herein by reference (claim 8).

12. Claims 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wilkie et al, US6022612 (of record) and the K RESIN ® DK11 product data sheet (of record) as applied to claim 8 above, and further in view of Marechal, EP1312624 (of record).

The rejection stands as per the reasons outlined in the previous Office Action, incorporated herein by reference.

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13. Claims 8-15, 17-19, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishii et al, WO 01/15897 (of record), in view of Marechal, EP1312624 (of record). The examiner notes that a copy of Ishii was already provided to applicant as part of the Office Action mailed on 09/02/2008.

14. A discussion of the disclosures of Ishii and Marechal as they relate to the claimed invention can be found in paragraphs 9-15 of the Office Action mailed on 09/02/2008, incorporated herein by reference (for claims 8-15,17-19, 24, 25).

15. Per the rationale discussed in the Office Action mailed on 09/02/2008, the examiner takes the position that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the composition of Example 4 of Ishii by substituting the bridged metallocene-catalyzed ethylene polymer of Marechal for the ethylene copolymer component, for the purposes of preparing a polymer composition having improved extrusion stability, as taught by Marechal. Said modification would result in the production of a final composition comprising 45% by weight of a SB block copolymer comprising 80% styrene and 20% butadiene, corresponding to the claimed SB block copolymer (for claim 8); 45% by weight of a metallocene-catalyzed ethylene polymer, corresponding to the claimed mPE component (for claim 8); and 10% of a SB copolymer containing 40% styrene and 60% butadiene. Said final composition corresponds to the claimed composition wherein the combination of the SB block copolymer and the mPE is present in the blend in an amount of at least 50% by weight (for claim 8).

***Response to Arguments***

16. Applicant's arguments filed 10/28/2009 have been fully considered but they are not persuasive.

17. Regarding the rejection of claims over the combination of Nabeta et al and Marechal, EP1312624: Applicant repeats the argument regarding a homogeneous blend previously presented in the submission filed on 05/06/2009. The examiner maintains the position that this argument is not persuasive per the rationale outlined in paragraph 9 of the Office Action mailed on 08/26/2009, incorporated herein by reference.

18. Regarding applicant's claim of unexpected results, the examiner first notes that, as stated in the previous Office Action, independent claim 26 requires that either the mPE or SB block copolymer is present in an amount greater than 50%; the example cited by applicant recites a 50/50 blend of the two components and therefore does not fall within the scope of the claimed invention. The allegedly unexpected results therefore are not relevant to the patentability of claim 26 and its dependent claim 27.

19. Regarding independent claim 8, it has been held that to rebut a presumption of obviousness, applicant may show "that there are new and unexpected results relative to the prior art;" see *Iron Grip Barbell Co., Inc. v. USA Sports, Inc.*, 392 F.3d 1317,1322,73 USPQ2d 1225, 1228 (Fed. Cir. 2004). As discussed in paragraphs 8-13 of the Office Action mailed 2/17/2009, incorporated herein by reference, the combination of Nabeta and Marechal renders obvious a film made from a composition comprising 55% by weight of SB block copolymer and 45% by weight of mPE, reading on the claimed

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composition wherein the SB block copolymer component is present in an amount of at least 50% by weight. As noted above, the cited results are obtained from a film comprising a 50/50 blend of a mPE and a SB block copolymer; the cited example does not provide evidence that the allegedly unexpected results are obtained in a composition wherein only the SB block copolymer is present in an amount of at least 50%, as rendered obvious by the prior art. The examiner further notes that the cited example does not demonstrate that the allegedly unexpected results are obtained when the sum of the mPE and SB block copolymer is at least 50% by weight, as rendered obvious by the combination of Ishii and Marechal discussed earlier in this Office Action.

20. Regarding the rejection of claims over Wilkie in combination with additional references, the examiner notes that applicant merely repeats the same arguments previously presented in the submission filed on 05/06/2009. The examiner maintains the position that these arguments are not persuasive per the rationale outlined in paragraphs 11-14 of the Office Action mailed on 08/26/2009, incorporated herein by reference. As applicant has not provided any new arguments and/or evidence to rebut the examiner's position outlined in the previous Office Action, the rejection of the claims is maintained.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Lenihan whose telephone number is (571)270-



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5452. The examiner can normally be reached on Monday through Thursday from 7:30-5:00 PM, and on alternate Fridays from 7:30-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Irina S. Zemel/  
Primary Examiner, Art Unit 1796

/Jeffrey Lenihan/  
Examiner, Art Unit 1796

/JL/